

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 8, 2004 Session

**SARAH DICK v. COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF CHILDREN'S SERVICES**

**Appeal from the Chancery Court for Davidson County
No. 01-3822-II Carol L. McCoy, Chancellor**

No. M2003-01073-COA-R3-CV - Filed October 20, 2004

Sarah Dick filed a petition in the trial court challenging the decision of the Tennessee Department of Children's Services ("DCS"), pursuant to which DCS terminated the monthly adoption assistance payments she had been receiving for her adopted son, Christopher. The decision by DCS also seeks to recoup benefits previously paid to Ms. Dick, which DCS contends were paid to her in error. Ms. Dick questions the decision of DCS, contending that the department's policy – which requires that adoption assistance payments be reduced in the event the recipient is also receiving Social Security Title II benefits ("Title II benefits") – is inconsistent with the federal scheme establishing the adoption assistance program for special needs children. The trial court affirmed DCS's decision. Ms. Dick appeals. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Kevin W. Weaver, Cordova, Tennessee, for the appellant, Sarah Dick.

Paul G. Summers, Attorney General and Reporter; and Juan G. Villaseñor, for the appellee, Commissioner of the Tennessee Department of Children's Services.

OPINION

I.

Prior to his adoption by Ms. Dick, Christopher, a special needs child, had been a foster child in Ms. Dick's home since 1990.¹ While in foster care, Christopher started receiving Title II benefits² after the death of his natural father. DCS was the representative payee for these payments during the time the child was in foster care.

Ms. Dick filed a petition to adopt Christopher on June 15, 1998. At that time, a DCS case manager, Ruth Hall, explained to Ms. Dick that, while the adoption was pending, she would be eligible to receive two types of benefits which would continue once the adoption was finalized: adoption assistance payments and Title II benefits. However, Ms. Hall went on to inform her that the receipt of Title II benefits would impact the amount of her monthly adoption assistance payments. Consequently, if Ms. Dick chose to receive Title II benefits, any adoption assistance payments would be reduced by the amount of those benefits. While Ms. Dick asked for additional information regarding the policy, such information apparently was not forthcoming. On May 28, 1998, Ms. Dick signed the initial adoption assistance application and started to receive adoption assistance payments. She did not indicate, at that time, that she intended to apply for Title II benefits.

Christopher's adoption was finalized on February 19, 1999. The following day, Ms. Dick contacted the Social Security Administration ("the SSA"), applied for a new Social Security card for her adopted son, and completed the paperwork required to receive the lump sum Title II benefits that were then being held for the child by DCS. In March, 1999, DCS received a letter from the SSA informing the department that Christopher's Title II benefits would be forwarded to a new payee. Apparently, DCS then returned to the SSA the Title II benefits it was holding for Christopher, and the SSA, in turn, forwarded them to Ms. Dick.

Since adoption assistance payments are negotiated between DCS and the adoptive parent on an annual basis, Ms. Dick was required to sign new agreements in 1999 and 2000. In both instances, Ms. Dick failed to report to DCS that she was receiving Title II benefits on Christopher's behalf. In 2001, during the renewal process, Ms. Dick acknowledged, for the first time, that she was

¹Christopher was placed in foster care shortly after his birth. His natural mother had a history of alcohol abuse and had tested positive for cocaine when the child was born.

²Christopher received Title II benefits, also referred to as "death benefits," pursuant to 42 U.S.C. § 404(d)(2) (2003), which provides, in relevant part, as follows:

If an individual dies before any payment due him under this subchapter is completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made...to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual. . .

receiving Title II benefits. The DCS case manager advised Ms. Dick that DCS policy required that it adjust her adoption assistance payments and that the overpayment would be calculated back to the date that Ms. Dick first received Title II benefits. When Ms. Dick refused to furnish information regarding the amount of Title II benefits she had received and was receiving, DCS cancelled her adoption assistance payments. By letter dated June 19, 2001, DCS informed Ms. Dick that her adoption assistance case had been closed due to the overpayment that had resulted from her concurrent receipt of Title II benefits and adoption assistance benefits.

Ms. Dick appealed DCS's termination of her adoption assistance. A hearing was conducted on August 15, 2001. The hearing officer upheld the termination and ordered DCS to take steps to recover the overpayment resulting from Ms. Dick's receipt of both benefits. The officer also directed that the SSA be notified of the dual payments. Ms. Dick filed a petition for reconsideration on September 20, 2001. In a letter of decision denying her petition, the hearing officer found as follows:

Ms. Dick knew, or certainly had every opportunity to know, that she could not receive both [Title II] benefits and Adoption Assistance benefits. Yet she intentionally withheld that information concerning her [Title II benefits].

Following the entry of DCS's final order on October 11, 2001, Ms. Dick filed a petition for reconsideration of the final order, which was also denied. The Commissioner of DCS ("the Commissioner") upheld the order, relying upon the DCS policy. In his opinion letter dated October 30, 2001, the Commissioner wrote:

[DCS's] stated policy is, and has been throughout the timeframes [sic] involved with Ms. Dick's adoption, that the receipt of [Title II benefits] *must* be considered in determining the amount of Adoption Assistance payments that can be made for a Special Needs child's adoption. Ms. Dick absolutely had sufficient notice of this requirement and simply chose to ignore it in order to receive additional monies to which she was not entitled under the established policies and procedures of [DCS].

(Emphasis in original). Ms. Dick filed her petition for judicial review on December, 10, 2001. Following a hearing, the trial court upheld the decision of DCS and ordered that Ms. Dick be required to repay to DCS the overpayment occasioned by her receipt of the dual benefits. Ms. Dick appeals.

II.

The Tennessee Uniform Administrative Procedures Act ("the UAPA"), codified in title 4, chapter 5 of the Tennessee Code, prescribes the scope of judicial review of administrative decisions.

The UAPA authorizes a reviewing court to “affirm the decision of the agency or remand the case for further proceedings,” but the court’s jurisdiction is limited as set forth in the applicable statute:

The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (5) Unsupported by evidence which is both substantial and material in light of the entire record.

Tenn. Code Ann. § 4-5-322(h) (Supp. 2003).

Once a party has exhausted his or her administrative remedies, he or she may seek judicial review in chancery court. Tenn. Code Ann. § 4-5-322(b)(1). Following a decision by the trial court, an aggrieved party may seek further review by appeal to this court. Tenn. Code Ann. § 4-5-323(a) (1998). The standard set forth in the UAPA governs the scope of review for both the trial court and the court of appeals. See *Gluck v. Civil Serv. Comm’n*, 15 S.W.3d 486, 490 (Tenn. Ct. App. 1999). In reviewing the determination of a final administrative decision, we are confined to the record. Tenn. Code Ann. § 4-5-322(g).

Ms. Dick challenges the department’s findings on two bases. First, she contends the DCS policy that precludes an adoptive parent from concurrently receiving full Title II benefits and full adoption assistance payments is inconsistent with federal law and policy, as well as inconsistent with the best interest of the child. Second, Ms. Dick argues that her rights have been prejudiced by the fact that DCS’s findings and conclusions are “arbitrary and unsupported by evidence, which is both substantial and material in light of the entire record.” We will address each contention in turn.

III.

Congress amended the Social Security Act in 1980 by enacting the Adoption Assistance and Child Welfare Act (“the AACW”), codified in 42 U.S.C. § 670, *et seq.* The AACW enables states to furnish adoption assistance to individuals who are in the process of adopting and do thereafter adopt children with special needs. See 42 U.S.C. § 670 (2003). For a state to be entitled to federal funds appropriated pursuant to the AACW, the state must submit a plan for providing adoption assistance that must, in turn, be approved by the Secretary of the Department of Health and Human Services (“the Secretary”) prior to the disbursement of any funds. 42 U.S.C. § 671(a) (2003).

The AACW enumerates several prerequisites for approval. These requirements include, among others, the implementation of safeguards to ensure the protection of information about individuals receiving assistance; the filing of reports of physical or sexual abuse; the establishment of a fair hearing procedure when a claim for assistance is denied or not acted upon in a reasonably prompt manner; and the development of individual case plans. 42 U.S.C. §§ 671(a)(8), (9), (12) & (16). The state's plan also must contain provisions for periodic review of "amounts paid as . . . adoption assistance to assure their continuing appropriateness." 42 U.S.C. § 671(a)(11). Once the plan is approved, the state may proceed to enter into adoption assistance agreements³ pursuant to which the state furnishes payments to individuals adopting special needs children. 42 U.S.C. §§ 673(a)(1)(A) & (B). The amount of an individual's payment is determined by an agreement between the adoptive parent and the state or local agency, and is set according to the needs of the child and the circumstances of the adoptive parents. 42 U.S.C. § 673(a)(3). The agreement may be altered by changes in circumstances, and it is incumbent upon an adoptive parent to inform the state agency of such changes. *Id.* The statute provides, in relevant part, as follows:

Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for such assistance payments, or *eligible for assistance payments in a different amount.*

42 U.S.C. § 673(a)(4) (emphasis added).

Pursuant to the federal mandate, the Tennessee legislature has vested DCS with the duty to administer the adoption assistance program and imposed upon it the obligation to promulgate rules and regulations relative to the providing of assistance to adoptive parents of children with special needs. Tenn. Code Ann. §§ 37-5-106(12) & (13) (Supp. 2003). The Commissioner has adopted policies relevant to the program which delineate (1) the definition of special needs, (2) the duty of case managers to inform prospective adoptive parents of the availability of adoption assistance, and (3) the services available for special needs children. *See DCS, Departmental Policies, Adoption Services, available at* <<http://www.state.tn.us/policies/chapter15.htm>> (last visited Oct. 5, 2004). Several policies outlined in the Adoptions Services Procedures Manual of August, 2001, address the

³ An "adoption assistance agreement," as defined in 42 U.S.C. § 675(3) (2003), is as follows:

[A] written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

manner in which an adoption assistance payment is to be calculated. With respect to the matter before this court, one section of the manual instructs that “[w]hen the adoptive parents become the payee for the [Title II/VA/other] benefits, decrease the monthly adoption assistance payment by the amount of the [Title II]/VA/other benefits.”⁴ In line with this policy, the adoption assistance agreement entered into by the adoptive parents and DCS requires that “[t]he adoptive parent(s) will notify the agency immediately upon being made payee for SSI, [Title II] or VA benefits on behalf of the child as well as any changes in the amount of said benefits.” With regard to overpayment of adoption assistance benefits by DCS, the Commissioner adopted Policy 3.2 (*see* DCS, *Departmental Policies, Fiscal Management*), which reads as follows:

Overpayments by the department have been made to adoptive assistance parents and to foster parents who later become adoptive assistance parents. [Tenn. Code Ann. §] 9-4-604⁵ obligates [DCS] to deduct from amounts which are or shall become due and payable to adoptive assistance parents under any contract between the adoptive assistance parents and the State of Tennessee any amounts which are due and payable to the State of Tennessee by the adoptive assistance parents.

<<http://www.state.tn.us/youth/policies/chapter3.htm>> (last visited Oct. 5, 2004). The DCS policy does not prohibit the concurrent receipt of other benefits and adoption assistance payments so long

⁴Similar language is contained in several other portions of the Adoption Services Procedures Manual. In the section entitled “Recovering An Adoption Assistance Overpayment,” one of the relevant circumstances is when “the adoptive family receives duplicate [Title II]/SSI/VA benefits and a monthly payment for the same period.” In negotiating the type and amount of adoption assistance, the manual directs case managers to explain the following to adoptive parents:

DCS expects the adoptive family to apply for and notify DCS of receipt of other available benefits (SSI/[Title II] or other benefits) and that these benefits may affect the amount of Adoption Assistance they receive.

The manual uses the word “may” because under certain circumstances, apparently not present in the instant case, an adoptive parent can seek relief from the DCS policy providing that other benefits be deducted in full from the recipient’s adoption assistance payment.

⁵Tenn. Code Ann. § 9-4-604 (Supp. 2001) reads as follows:

No person shall draw any money from the public treasury until all debts, dues, and demands owing by such person to the state are first liquidated and paid off. The commissioner of finance and administration shall not issue any warrant upon the treasury in favor of a person in default until all of such person’s arrearages to the treasury are audited and paid, otherwise than by allowing such defaulter or delinquent credits on the amounts of such person’s delinquencies for such sum or sums as may at any time be due and owing to such person from the treasury. Notwithstanding the provisions of this section to the contrary, the commissioner may issue such a warrant upon the commissioner’s determination that refusing to issue such a warrant would result in an interruption of essential services.

as the adoption assistance payments are reduced by the amount of the other benefits received. The DCS policy is clear that if the other benefits exceed the adoption assistance payments, DCS is entitled to recoup adoption assistance benefits paid to an adoptive parent.

In refuting Ms. Dick's contention that the policy of DCS precluding the receipt of duplicative benefits is inconsistent with federal law, the trial court relied on a provision of the federal statute that limits the amount of adoption assistance payments so that they may not "exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home." 42 U.S.C. § 673(a)(3). As a foster parent, Ms. Dick received benefits furnished by DCS, and DCS, as the representative payee, received the Title II benefits. Consequently, the court held that Ms. Dick was not entitled to retain both, as their sum total would exceed the amount of assistance she received as a foster parent. On appeal, Ms. Dick argues that the trial court's interpretation and application of this provision was in error, as Ms. Dick was not receiving more in adoption assistance payments than she did as a foster parent. Therefore, according to Ms. Dick, the trial court misinterpreted and misapplied the provision by effectively classifying Christopher's Title II benefits as a type of adoption assistance. DCS, in its brief, takes the position that the trial court correctly stated the law; but it acknowledges that the law relied upon by the trial court is not implicated by the facts of this case. DCS proffers, however, that its decision should be upheld, not because the combination exceeded that which Ms. Dick received as a foster parent, but rather because the DCS policy that an overpayment occurs when there is concurrent receipt of Title II benefits and adoption assistance payments is consistent with federal law and policy.

We agree with DCS that the law relied upon by the trial court is not implicated by the facts of this case. Accordingly, we conclude that the trial court's conclusions underlying its decision are incorrect. However, this does not end our inquiry. "Our [c]ourts have held that a correct judgement of a trial court should not be reversed on appeal merely because it was based upon an insufficient or wrong reason." *Kelly v. Kelly*, 679 S.W.2d 458, 460 (Tenn. Ct. App. 1984) (citations omitted). Therefore, we now focus our attention on DCS's argument that the result reached by the trial court is correct because Ms. Dick was receiving duplicative benefits contrary to DCS policy, a policy which, according to DCS, is consistent with federal law. If it is, then we can affirm the trial court's judgment even though the reasoning underlying that judgment is faulty.

Ms. Dick refers us to the provisions in the AACW prohibiting the use of a means test in calculating the amount of adoption assistance. In support of her argument, Ms. Dick cites to a policy announcement issued by the Commissioner of the Administration on Children, Youth and Families of the U.S. Department of Health and Human Services, the purpose of which was to provide "comprehensive guidelines for States to use in determining a child's eligibility for title IV-E adoption assistance." With regard to determining the amount of adoption assistance payments, the announcement provides as follows:

The use of a means test is prohibited in the process of selecting a suitable adoptive family, or in negotiating an adoption assistance

agreement, including the amount of the adoption assistance payment. Once a child has been determined eligible under [42 U.S.C. § 673], adoptive parents cannot be rejected for adoption assistance or have payments reduced without their agreement because of their income or other resources.

(Footnote omitted). Ms. Dick relies on the federal prohibition against using a means test in negotiating an adoption assistance agreement to argue that Title II benefits should not be considered in calculating the amount of the monthly adoption assistance payments. Ms. Dick even suggests that the DCS policy supports the idea that Title II benefits are not to be calculated in the monthly stipend, citing DCS's Adoption Services Procedures Manual of August, 2001, which states as follows:

After finalization of the adoption, if the child receives [Title II]/VA benefits as a result of the adoptive parent's circumstances (disability, age), consider these benefits as the adoptive family's income. These benefits are not considered when negotiating monthly payment.

Ms. Dick's argument on this point is without merit. The provision cited refers to benefits as a result of the "*adoptive parent's* circumstances." (Emphasis added). A separate provision in the same section of the manual provides that with respect to Title II/VA or other benefits, "[w]hen the adoptive parents become the payee for the benefits, decrease the monthly adoption assistance payment by the amount of the [Title II]/VA/other benefits." We conclude from this that the DCS policy provides that an adoptive parent's adoption assistance payment should be reduced by the amount of Title II benefits being paid to the adoptive parent on account of the special needs child.

There are no provisions in the federal statutory scheme expressly addressing the concurrent receipt of adoption assistance payments and Title II benefits, nor are there any provisions relative to overpayments. See *Baer v. Comm'r, Maine Dept. of Human Servs.*, 738 A.2d 849, 851 n.3 (Me. 1999). Of the numerous requirements imposed upon the states in developing their plans, see 42 U.S.C. § 671(a), and the provisions relating to implementation of the plan, see 42 U.S.C. § 673, the statutes are silent as to the manner by which a state may recoup an overpayment. Once a state implements a plan for furnishing assistance to adoptive parents of special needs children, that plan is subsequently approved by the Secretary. See 42 U.S.C. § 671(b). Since disbursement of the funds is conditioned upon approval of the state's plan, where the federal government has consistently subsidized the state adoption assistance program, it can be said that the state program has the "imprimatur of the federal government." *Glanowski v. New York State Dept. of Family Assistance*, 225 F.Supp.2d 292, 302 (W.D.N.Y. 2002).

There is nothing before us to suggest that the DCS policy has ever failed to meet the Secretary's approval. As there are no federal provisions expressly, or by clear implication, forbidding the DCS policy under discussion, it appears to us that the subject policy is entirely consistent with the AACW. States are granted wide discretion to develop and implement plans under the AACW. *Id.* (citing 42 U.S.C. § 671). Consequently, we do not find that the decision of

DCS to terminate Ms. Dick's adoption assistance benefits or its decision to recoup benefits to be "[i]n violation of constitutional or statutory provisions." See Tenn. Code Ann. § 4-5-322(h)(1).

In further support of our holding, we rely upon a case that addresses overpayments in the context of the State of Maine's regulatory scheme for implementing the AACW. See *Baer*, 738 A.2d at 850. In *Baer*, the adoptive parent applied for Social Security benefits for her adopted child, and subsequently received a retroactive check. *Id.* Consequently, the Maine Department of Human Services sought reimbursement for overpayment of adoption assistance. *Id.* Despite Baer's argument that the department did not have the authority to recoup overpayments, the court held that the agreement entered into by Baer and the department was unambiguous in providing that the amount of adoption assistance would be reduced by any Social Security benefits received by Baer on behalf of her adopted son. *Id.* at 851. Where the Social Security benefits exceeded the amount of adoption assistance, the department was permitted to enforce the contract and collect the overpayment. *Id.* Similarly, where the contract that Ms. Dick signed clearly stated that the parent was obligated to report the receipt of benefits on behalf of Christopher, and she had been previously apprised of the policy precluding receipt of duplicative payments, DCS was entitled to enforce the contract and seek repayment.

IV.

Ms. Dick also challenges the factual basis of DCS's decision as being "[u]nsupported by evidence which is both substantial and material in light of the entire record." Tenn. Code Ann. § 4-5-322(h)(5). In reviewing the factual basis of an agency's decision, we are once again subject to the confines of the UAPA, which prescribes that the reviewing court "shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Tenn. Code Ann. § 4-5-322(h). In light of this limited standard of review, "[c]ourts may reject an administrative agency's factual findings only if a reasonable person would necessarily draw a different conclusion from the record." *Martin v. Sizemore*, 78 S.W.3d 249, 276 (Tenn. Ct. App. 2001)(citing *Jones v. Greene*, 946 S.W.2d 817, 828 (Tenn. Ct. App. 1996)).

Ms. Dick concedes that at the time she petitioned for adoption, Ms. Hall, her DCS case manager, informed her that she could not receive both adoption assistance and Title II benefits. However, Ms. Dick tenders a myriad of reasons to justify her failure to inform DCS that she was receiving Title II benefits in addition to adoption assistance. Among those reasons, Ms. Dick contends that although the policy was mentioned to her, no one was able to explain the policy in detail; that Ms. Hall was the fourth case manager to whom she had been assigned, and no previous case manager had informed her of the policy; that no written policies were ever furnished despite Ms. Dick's numerous requests; that it was incumbent upon the adoption assistance designees, who were assigned to update, verify and approve her annual adoption assistance agreements, to monitor the distribution of Title II benefits; and that the SSA notified DCS that another payee had been named, thereby, according to Ms. Dick, demonstrating that DCS was already aware of her receipt of Title II benefits from the SSA.

In the Commissioner's order denying Ms. Dick's petition for reconsideration, he stated as follows:

Ms. Dick intentionally failed to notify [DCS] that she had begun receiving [Title II benefits] for her adopted child. The requirement to report this event was contained in every Adoption Assistance Agreement that Ms. Dick signed. Her excuse that she never had time to read and understand any copy of this extremely important document is absolutely without merit.

The trial court found "substantial and material evidence to support [DCS's] termination of the adoption assistance benefits." We agree. Ms. Dick's conduct belies her argument. As required for receipt of adoption assistance, Ms. Dick entered into agreements with DCS in 1998, 1999, 2000 and 2001. Those agreements unequivocally state that "[t]he adoptive parent(s) will notify the agency immediately upon being made payee for SSI, [Title II] or VA benefits on behalf of the child as well as any changes in the amount of said benefits." The agreements also indicate that DCS may terminate the agreement if it "determines that the family fails to complete in [sic] the renewal process for adoption assistance." We find there was substantial and material evidence to support DCS's termination of benefits and its attempt to recoup the overpayment from Ms. Dick. Although Ms. Dick may not have been well-informed of the intricacies of the DCS policy, she was advised that she was not permitted to receive both adoption assistance payments and Title II benefits on behalf of Christopher, and she signed multiple agreements acknowledging the existence of this policy. She cannot now claim that she misunderstood the policy or that it was incumbent upon the DCS case managers to stop her from receiving dual payments. It is clear (1) that the agreements between Ms. Dick and DCS are binding contracts, *see* 42 U.S.C. § 675(3), and (2) that Ms. Dick may not be excused from her obligations based upon her present assertion that she did not fully comprehend the relevant policy. As one court stated,

[i]t will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained . . . A contractor must stand by the words of his contract; and, if he will not read what he signs, he alone is responsible for his omission.

De Ford v. Nat'l Life & Accident Ins. Co., 185 S.W.2d 617, 621 (Tenn. 1945) (quoting ***Upton v. Tribilcock***, 91 U.S. 45, 50, 23 L.Ed. 203 (1875)). It is presumed that Ms. Dick read the contract when she signed it and comprehended her obligation to report that she was receiving Title II benefits on behalf of Christopher. Consequently, the evidence contained in the record was substantial and material and supports DCS's decision.

V.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant, Sarah Dick. This case is remanded to the trial court for such further proceedings, if any, as may be required, and for collection of costs assessed below, all pursuant to applicable law.

CHARLES D. SUSANO, JR., JUDGE